

James C. Thompson, #9888
STRONG & HANNI
9350 South 150 East, Suite 820
Sandy, Utah 84070
T: (801) 532-7080
F: (801) 323-2037
jthompson@strongandhanni.com
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CONTINENTAL WESTERN INSURANCE
COMPANY, an Iowa corporation,

Plaintiff,

v.

SALMON ELECTRICAL CONTRACTORS,
INC. a Utah corporation,

Defendant.

**COMPLAINT FOR DECLARATORY
RELIEF**

Case No.

Judge:

Plaintiff Continental Western Insurance Company, by and through counsel, brings this action pursuant to 28 U.S.C. §2201 to obtain a declaration of the parties' rights under various insurance policies issued by Plaintiff. Plaintiff alleges as follows:

I. PARTIES

1. Plaintiff Continental Western Insurance Company ("Continental Western") is an Iowa corporation with its principal place of business in Urbandale, Iowa.

2. Defendant Salmon Electrical Contractors, Inc. (“Salmon Electrical”) is and at all times material to this action has been a Utah corporation with its principal place of business in Woods Cross, Utah.

II. JURISDICTION & VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a) because this action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(1) because the defendant is located in Utah.

5. This Court has authority to determine the parties’ respective rights and other legal obligations pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201.

III. FACTS

6. Continental Western issued the following insurance policy to Salmon Electrical: Policy No. CPA 602-8221-20, including Commercial General Liability Coverage, Professional Liability Coverage Part-Contractor’s Errors and Omissions Endorsement, CL PL 00 01 05 07, and Umbrella Coverage. A copy of the Policy is attached hereto as ***Exhibit 1***.

7. On or about May 24, 2019, Baker Construction and Development, Inc. filed a Counterclaim against Salmon Electrical in a suit filed in Superior Court of Washington for the County of Whitman, Cause No. 19-2-00031-38, *Salmon Electrical Contractors, Inc. vs. Baker Construction and Development, Inc., et al.* (the “Underlying Lawsuit”). A copy of the Answer to Amended Complaint, Affirmative Defenses and Counterclaim filed in the Underlying Lawsuit is attached hereto as ***Exhibit 2***.

8. The Counterclaim in the Underlying Lawsuit includes the following allegations (among others): Salmon Electrical’s (or its subcontractor’s) original electrical design contained

errors. Counterclaim ¶ 3. Salmon Electrical had also entered into a separate contract to install the electrical systems as designed. Counterclaim ¶ 5. To correct the discovered design errors, an “alcove had to be ground out, so that the larger equipment would fit, causing property damage.” Counterclaim ¶ 7. Electrical wiring had to be removed and replaced with wiring that could handle the appropriate loads. Counterclaim ¶ 8. The rewiring caused “other damages”, as well. Counterclaim ¶ 8. It appears that Salmon Electrical had installed this equipment and wiring. Counterclaim ¶ 5. Baker alleges additional manpower costs were incurred due to Salmon Electrical’s design errors and subsequent rework (*see* Counterclaim ¶ 10-12), and that Baker had to pay liquidated damages to the Project owner due to the delays also caused. Counterclaim ¶ 15. Baker alleges breach of contract and negligent electrical design, and prays for judgment against Salmon Electrical in an unspecified amount.

9. In addition to other coverage impediments to be raised in this action Baker does not allege damages because of “property damage” as defined by the Policy, and Continental Western has no duty to defend Salmon Electrical against the claims.

10. Further, several exclusions in the Policy apply to bar coverage, including Professional Services exclusions found in the Professional Liability Coverage Part, the Commercial General Liability Coverage Part, and the Umbrella Coverage Part.

11. None of the relief sought by the Underlying Counter-Plaintiff is covered, because the Professional Services Exclusions exclude such damages.

12. A representative of Salmon Electrical tendered the Counterclaim to Continental Western. Continental Western is defending Salmon Electrical under a reservation of rights, pending the outcome of this declaratory judgment action.

IV. CLAIM FOR DECLARATORY RELIEF

13. Plaintiff hereby incorporates by reference all preceding paragraphs as though fully set forth herein.

14. An actual, present, and bona fide justiciable controversy exists between Plaintiff and Defendant with respect to whether Plaintiff has any defense or indemnity obligation under the Continental Western policy with regard to the Underlying Lawsuit.

15. A judicial declaration is necessary to establish the parties' rights and duties, if any, under the Continental Western policy.

16. Plaintiff is entitled to a declaration that Plaintiff has no duty to defend Defendant against the Underlying Lawsuit because none of the allegations in any proceeding in the Lawsuit potentially fall within the terms of coverage provided by the Continental Western policy.

17. In the alternative, Plaintiff is entitled to a declaration that Plaintiff has no duty to indemnify Defendant against the Underlying Lawsuit because no damage Defendant could be found liable for in the Lawsuit is covered by the Continental Western policy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. Judgment declaration that Plaintiff has no duty to defend Defendant in the Underlying Lawsuit.

2. That Plaintiff recover its taxable costs and disbursements herein; and

3. For such other and further relief as the Court deems just and equitable.

DATED this 6th day of August, 2019.

STRONG & HANNI

/S/ James C. Thompson
James C. Thompson
Attorneys for Plaintiff